

The 22nd January, 1976

No. 493-4Lab-76/2324.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workman and the management of M/S. The Electric Construction and Equipment Company Ltd., (Lamp Division), Sonepat.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 34 of 1974

between

SHRI K. S GAUTAM AND THE MANAGEMENT OF M/S. THE ELECTRIC CONSTRUCTION AND EQUIPMENT COMPANY LTD., (LAMP DIVISION), SONEPAT

AWARD

By order No. ID/13553-57, dated 18th August, 1974, of the Governor of Haryana, the following dispute between the management of M/S. The Electric Construction and Equipment Company Ltd., (Lamp Division), Sonepat and its workman Shri K. S. Gautam was referred for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947.—

“Whether the termination of services of Shri K. S. Gautam was justified and in order ? If not, to what relief is he entitled ?

The parties appeared in this court in response to the notices of reference sent to them and filed their pleadings.

Whereas the workman alleged,—*vide* statement of claim filed by him that he had been appointed as a Typist,—*vide* letter dated 25th November, 1971 on wages of Rs. 315/- p.m., and his services had been terminated with effect from 21st October, 1973 without assigning any reason, by the management or giving him one month's notice, the management pleaded that the workman absented himself from his duties with effect from 1st December, 1973 and thus abandoned his job voluntarily. They pleaded that he had been transferred from Sonepat to their Delhi establishment with effect from 21st November, 1973 and that he worked there till 30th November, 1973 and began absenting himself thereafter with the result that his name had to be struck off the rolls of their employees. They further resisted the demand of the workman on the ground that his last place of work being Delhi, the Haryana Government had no jurisdiction to make this reference and that the reference was liable to be quashed on account of the failure of the workman to raise a demand directly on them.

The workman filed rejoinder while controverting the pleas of the management stated above and denying his transfer from Sonepat to Delhi.

The following issues were framed on plans of the parties,—*vide* order, dated 4th April, 1975.—

1. Whether the last place of posting of Shri K. S. Gautam, workman concerned was at Delhi and, therefore, Haryana Government is not the appropriate Government to refer the dispute and the reference, in the result, is bad in law and without jurisdiction ?
2. Whether it is a case of self abandonment of services by the workman as alleged in the preliminary objection No. 1 in the written statement ?
3. Whether the demand, the subject matter, of the present reference was properly raised as required under law ? If not with what effect ?
4. Whether the termination of services of Shri K. S. Gautam was justified and in order ? If not, to what relief is he entitled ?

I have heard the authorised representatives for the parties and seen the written arguments filed by them. I decide the issues as under.

Issues Nos. 1 and 2.

These issues being interconnected shall be disposed of and decided by me together. In view of the pleas of the parties the only important question of fact required to be decided for resolving these issues,

would be in respect of the transfer of the workman from Sonepat to the Delhi establishment of the management and his having actually accepted the same by discharging his duties at the place of his transfer for some days. In case it is found on consideration of the evidence led by the parties that the workman was transferred from Sonepat to Delhi w.e.f. 21st November, 1973 and he actually worked there till 30th November, 1973 as pleaded by the management, their case in respect of voluntary abandonment of the job by the workman would be made out.

The management in order to prove their plea covered by these issues examined Shri Vishva Nath Khemka their Production Controller M.W. 1 and Shri Mohinder Sexna their Sales Manager M.W. 2 besides bringing on record the documents Ex. M. 1 to M. 4. I shall now consider and discuss in detail the evidence oral and documentary led by the management.

Shri Vishva Nath Khemka deposed that the workman was transferred to their Head Office at Delhi as a Trainee,—vide order dated 20th November, 1973 copy Ex. M. 1 and that he actually joined his duties at Delhi on 21st November, 1973 and continued to do so till 30th November, 1973 whereafter he absented himself. He added that their Delhi Office had received two telegrams Exs. M. 2 and M. 3 from him asking for leave and that a reply, dated 27th December, 1973 Ex. M. 4 was sent to him declining the acceptance of his leave applied by him for an indefinite period. He deposed in reply to a question made to him in cross-examination, that the workman was not sent on outside duty except once or twice in cases of emergency. Shri Mohinder Sexna Sales Manager of New Delhi Head Office corroborated the statement of Shri Vishva Nath Khemka and deposed that the workman Shri K. S. Gautam was transferred to his Delhi office in the last week of November, 1973 and worked there for about 7 to 8 days and failed to come thereafter. He added that he reported the absence of the workman Shri K. S. Gautam to his Chief Executive Officer. Nothing could be brought in cross-examination of any of these witnesses leading me to suspect his evidence. I on the other hand, find this evidence fully corroborated by the documentary evidence referred to above.

Ex. M. 1 is the copy of the letter, dated 20th November, 1973 written by the respondents to Shri N. D. Dagaji an officer of the Head Office at New Delhi in reply to the latter's memo, dated 16th November, 1973 informing him that Shri Gautam was being sent to attend his office with effect from 21st November, 1973 and that he should be paid reasonable sum as expenses of his daily journey from Delhi to Sonepat. Ex. M. 2 is the telegram received at Delhi Head Office of the respondents, from the workman praying for grant of leave for 17th November, 1973 and 18th November, 1973 on the plea of cancellation of trains and his inability to attend the office. Ex. M. 3 is another telegram received by the Head Office at Delhi from Shri Gautam, the workman concerned praying for grant of leave from 19th December, 1973 onwards, till the date of normal working of the trains. Ex. M. 4 is the copy of the letter sent by the respondents' Delhi Head Office to Shri K. S. Gautam acknowledging his telegrams requesting for grant of leave from 19th December, 1973 onwards and telling him that such request could not be accepted, particularly when other persons were found taking journey from Sonepat to Delhi every day and some of them come to their office. When confronted with the telegrams Exs. M. 2 and M. 3, constituting an important admission of the workman, the latter flatly denied having sent the same to the management at Delhi. A bare perusal of the telegrams would, however, indicate that these do not appear to be fabricated or false documents and it can not be imagined that the management took it in their heads to prepare this defence as far back as in December, 1973 and manipulated the receipts of these telegrams from their own person. Each of these telegrams bears a post office seal and is on the prescribed *pro forma* and a bare denial of the workman of his being author thereof, in absence of any evidence in rebuttal, is not sufficient to justify an inference of these being false or manipulated documents. Their authenticity is on the other hand, made out by the letters Ex. M. 1 and M. 4 which themselves appears to be genuine documents. The oral and documentary evidence relied on by the management thus leaves no doubt in my mind that the workman Shri K. S. Gautam was actually transferred verbally from Sonepat to Delhi with effect from 21st November, 1973 and he worked there till the end of November, 1973 in token of his having accepted his transfer and absented himself from duty thereafter. The inference is that as a result of the management not accepting his applications for grant of leave, he did not join his duties and abandoned his job.

The solitary statement of the workman in support of his plea that he had been sent on out door duty in the Head Office at Delhi for the period from 13th November, 1973 to 20th November, 1973 and that he did the filing work Ex. W. 2 there can not be taken as sufficient for rebutting the overwhelming evidence led by the management. His bare denial of the case of the management is again not sufficient to rebut the case. Above all the telegrams Exs. M. 2 and 3 constitute an important admission of the workman in respect of his having actually joined his duties at Delhi in compliance with the verbal orders of transfer communicated to Delhi Head Office by Sonepat office,—vide letter Ex. M. 4. I thus decide both these issues in favour of the management.

Issue No. 3

I for the reasons stated by me in my order, dated 10th October, 1975 in reference of Shri S. C. Sethi V.S. M/S. Kirloskar Oil Engine (P) Ltd., Faridabad hold that it was no longer necessary for the workman to serve notice of demand directly on the management and for the later to reject it before the matter was taken to the Conciliation Officer, in order to constitute an industrial dispute. On facts, it stands however, admitted by the workman that no notice of demand was directly served on the management. I decide the issue accordingly.

Issue No. 4.

It would appear from my findings on Issues Nos. 1 and 2 that the management never terminated the services of the workman and that the latter abandoned his job of his own accord voluntarily and that he is not entitled to any relief.

I thus answer the reference while returning the award in terms of my findings made above. There shall be no order as to costs

The 6th January, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 63, the 9th January, 1976

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

The 28th January, 1976

No. 691-4 Lab-76-2759.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s. Mechanical Movements (P) Ltd., Bahadurgarh.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK.

Reference No. 14 of 1974

between

**SHRI RAM PARKASH AND THE MANAGEMENT OF M/S MECHANICAL MOVEMENTS (P) LTD.,
BAHADURGARH**

AWARD

By order of No. ID/RK/200-C-73/4970-74, dated 21st February, 1974 of the Governor of Haryana, the following dispute between the management of M/s. Mechanical Movements (P) Ltd., Bahadurgarh and its workmen Shri Ram Parkash was referred for adjudication to this court, in exercise of the powers conferred by clause (c) of subsection (i) of Section 10 of the Industrial Disputes Act, 1947.

"Whether the termination of service of Shri Ram Parkash was justified and in order? If not, to what relief is he entitled?"

The parties appeared in this court in response to the notices of reference sent to them. Shri Ram Parkash, workman alleged, *vide* statement of claim filed by him, that Shri Naresh and Abnash owners of the factory called him on 4th October, 1973 and obtained his signatures forcibly on some papers without telling him their contents and that he thereafter turned him out of the factory. He stated that he never resigned his job.

The management while denying the allegation of the workman pleaded that the latter voluntarily submitted his resignation on the evening of 4th October, 1973 with a request that his accounts be settled and resignation be accepted. They alleged that his resignation was accordingly accepted and his accounts were fully settled and that he thereafter left the factory premises. They set up a plea that the workman actually signed the register of wages in token of full and final settlement of his accounts.

The workman filed his rejoinder controverting the pleas of the management with the result that a issue was framed as per terms of the reference *vide* order dated 7th August, 1974 of Shri O.P. Sharma, the then Presiding Officer of the Labour Court.

The management examined Shri S.P. Chanda their factory manager as M.W. 1 who fully corroborated the pleas of the management and brought on record the original resignation Ex.M.1. He deposed that on the submission of the resignation Ex. M.1 by the workman he accepted the same,—*vide* order Ex.M.1/A and that all dues payable to the workman till the date of acceptance of the resignation were paid to him,—*vide* entry made in the register of payment of wages duly signed by the latter.

The workman while appearing as his own witness reiterated the story stated by him in the statement of claim and gave out that he made a report in the police relating to the incident of the management obtaining his signature forcibly on the resignation. He admitted that he did not receive any mark of injury while making attempt to free himself from the clutches of Sarvshri Abnash and Naresh after he had been caught hold of by them. He did not bring on record the copy of the report allegedly lodged by him with the police. He added that the signatures were forcibly obtained 3 or 4 times. He admitted his signatures on the entry Ex. MX in the register of wages and the Hindi writing over his signatures relating to his having received the amount in full and final settlement of all his claims.

It would appear that the solitary statement of the workman remained un-corroborated, so much so, the copy of the report alleged to have been lodged by him in the police station could not be produced. The inference under the circumstances is that no such report was lodged by him and the story put forth by him is false and fabricated. Even otherwise, it can not be believed that he would pass on 3 or 4 signatures in favour of the management without any struggle and receipt of any mark of scratch on his body. He admitted the writing and his signatures Ex. MX there on that he had received full payment stated in the register of wages Ex. W.3. He did not allege either in the notice of demand or in the statement of claim that even this writing was obtained from him by force. Nothing could be brought in the cross-examination of Shri S. P. Chanda leading me to suspect his evidence.

I thus relying on the statement of Shri S.P. Chanda and disbelieving the testimony of the workman hold that the latter submitted his resignation on 4th October, 1973, Ex. M. 1 of his own accord voluntarily and the same was accepted by the management,—*vide* order Ex. M.1/A and this order was duly conveyed to him at that time and he finally received his dues on the same day in full and final stettlement of all his claims,—*vide* entry Ex. MX made by him in his own handwriting and under his own signatures. The workman is, therefore, obviously not entitled to any relief.

I decide the issue accordingly and return the award in terms of my findings made above.

Dated 9th January, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 118, dated 16th January, 1976.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment, Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

The 22nd January, 1976

No. 615-4 Lab-75/2328.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Bata Shoe Company Private Limited, Township Faridabad :—

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 48 of 1974

between

SHRI BAHADUR SINGH WORKMAN AND THE MANAGEMENT OF M/S. BATA SHOE
COMPANY PRIVATE LIMITED, TOWNSHIP, FARIDABAD.

AWARD

By order No. ID/FD/74/9979, dated the 17th April, 1974, the Governor of Haryana, referred the following dispute between the management of M/s Bata Shoe Company Private Limited, Township, Faridabad

and its workman Shri Bahadur Singh to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Bahadur Singh was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in this Tribunal in response to the notices of reference sent to them and filed their pleadings.

The workman Shri Bahadur Singh alleged,—*vide* claim statement dated 2nd July, 1974 filed by him on 18th July, 1974 that he had been working as a permanent Chowkidar on wages of Rs. 245.50 P.M. with the respondent since 14th July, 1964 and that he gave no chance of complaint during the whole period of his service and that his services had been terminated with effect from 14th September, 1972,—*vide* letter of that date illegally, without holding a domestic enquiry, by the management, in violation of principles of social and natural justice and the provisions of the standing orders of the company and the Industrial Disputes Act.

The management pleaded that the reference made to this Tribunal was had in law on account of the failure of the workman to adopt the grievance procedure as stated in clause 32 of the standing orders of the company. On facts the management denied the allegations made by the workman in the notice of demands as also in the claim statement that he gave no cause of complaint to them during the period of his service and pleaded that he had been warned a number of times for negligence of duties resulting in their ultimately losing confidence in him particularly when he was employed in a position of trust in the Watch and Ward Wing of the Company. They stated that on 9th September, 1972, the Personnel Officer of the Company was informed in writing of an incident which raised doubt in their mind about the integrity of the workman and that they discharged him in similitate under clause 29-A of their standing orders on finding his explanation to the show-cause notice as unsatisfactory as a result of their loss of confidence in him. This according to them did not require holding of a domestic enquiry after service on the workman of the charge-sheet. They thus set up a case that the termination of the services of the workman in the manner as referred to above was fully justified and could not be said to be in violation of principles of social and natural justice.

The workman filed a rejoinder while reiterating the allegations made by him in the claim statement and controverting the pleas of the respondent. He stated that even though he followed the grievance procedure as stated in clause 32 of the standing orders it was by no means obligatory on him to do so. He specifically set up a case that the order of his discharge simpliciter was actually a colourable dismissal from service made with an ulterior motive to victimise him and that the same inflicted a stigma on his character.

The following issues were thus framed on pleas of the parties,—*vide* order dated 13th September, 1974 of Shri O.P. Sharma, the then Presiding Officer of the Industrial Tribunal:—

- (1) Whether the present reference is bad in law because the workman concerned has not complied with the provisions of clause 32 of the Certified Standing Orders of the Company ? (on management).
- (2) Whether the termination of services of Shri Bahadur Singh was justified and in order ? If not, to what relief is he entitled ?

I have heard the learned authorised representatives for the parties at some length with reference to the evidence led by them and considered the written arguments filed on behalf of the management on record. It would be helpful to state the provisions of clause 32 of the standing orders of the company and the admitted facts of the case as found disclosed from the documents brought on record by the parties, for deciding the issues. The provision of clause 32 of the standing orders of the company lays down as under :—

Clause 32.—If a workman desires to dispute or feels dissatisfied from any order passed against him by the Company or by the Personnel Welfare Officer under these Standing Orders and Rules other than in respect of an order arising out of any complaint made by him, the following procedure will be adopted :—

- (a) The workman will be entitled to appeal in writing to the Works Committee, if in existence, within five days of receipt of such order. If the Works Committee arrives at any unanimous decision it will make a recommendation to the Company to implement such unanimous recommendations which decision will be binding on the workman and no further appeal shall lie.
- (b) If, however, no unanimous recommendation could be made by the Works Committee, in that event the workman will be entitled to appeal to the Chairman of the Company within one month from the receipt of the intimation from the Works Committee. On receipt of the Chairman's decision, if the workman still feels dissatisfied, in that event within one month from the date of receipt of decision of the Chairman, he, through his Union, would be entitled to take recourse to such remedy as may be available under the Industrial Disputes Act of 1947, to redress his grievance.

The Personnel Officer of the Company sent a letter Ex. W-1, dated 9th September, 1972 to the workman stating therein that it had been reported to him on 1st September, 1972 at about 8.30 A.M. that one Shri Hari Chand who supplied Milk to the Canteen found an envelope containing Rs. 50/- near the main gate of the factory where he (Bahadur Singh) workman was on duty and that he (Bahadur Singh) received that amount saying that he would deposit the amount with the company and failed to deposit the same thereafter indicating his dishonest intention. He was thus called upon to submit his reply in the matter. The workman stoutly denied the allegations made against him,—*vide* his letter Ex. W-2 dated 12th September, 1972 while specifically giving out that he was not handed over any money and the accusation was false. The Personnel Officer considering this explanation as unsatisfactory terminated his service under clause 29-A of the standing order,—*vide* letter Ex. W-3 dated 14th September, 1972 sent to him with an averment that they had lost confidence in him.

The workman filed an appeal dated 16th September, 1972 copy Ex. W-4 before the Chairman, Works Committee of the Company against the order of the Personnel Officer of the termination of his services, in accordance with the procedure laid down under clause 32 of the Standing Orders with a prayer that the decision of the Works Committee be communicated to him within 15 days of the receipt of the appeal by them failing which he would be compelled to take further legal steps. On not hearing from the Works Committee regarding the fate of his appeal till 20th October, 1972, he filed an appeal copy Ex. W-5 before the Chairman of the Company praying for granting him justice at his earliest convenience. He stated that in case the Chairman of the company failed to give him relief he shall have no other alternative but to raise an industrial dispute. Nothing was done till 21st November, 1972 when Shri A. Banerjee, Industrial Relation Advisor of the Company informed the workman,—*vide* letter Ex. W-11 that his appeal filed before the Chairman of the Company had been forwarded to the authorities at Faridabad for necessary action. The workman sent letter copy Ex. W-6 dated 2nd December, 1972 to the Factory Manager of the Company with reference to the letter of Shri A. Banerjee asking him the fate of his case and specifically mentioning that he was badly suffering from the consequences of un-employment caused on account of delay on the part of the management to decide his case. He prayed for expediting the matter. The Personnel Officer replied,—*vide* his letter dated 6th December, 1972 Ex. W-7 that his grievance was pending with the Works Committee and it was premature for him to approach any other authority till the same was disposed of. The workman served a notice of demands dated 26th December, 1972 on the management leading to this reference.

The Conciliation Officer called upon the parties to appear before him on 9th January, 1973 at 11.00 A.M.,—*vide* his letter dated 4th January, 1973 Ex. W-8. The Personnel Officer of the Company sent letter Ex. M-5 dated 11th January, 1973 to the Conciliation Officer complaining that the demand notice was premature in view of the pendency of the appeal of the workmen before the Works Committee and the latter's indecision. He sent his report to the Labour Commissioner along with three copies of notice of demands dated 26th December, 1972,—*vide* his letter, copy Ex. W-9 dated 24th January, 1973. The Labour Commissioner asked the management,—*vide* letter copy Ex. W-10 dated 20th July, 1973, the steps that were being taken by them on the appeal of the workman filed before the Works Committee and the reasons for its indecision. The management remained contented by replying,—*vide* letter Ex. M-6, dated 30th July, 1973 that no unanimous decision could be arrived at in the appeal of the workman by the Works Committee. The Labour Commissioner wrote letter copy Ex. W-14, dated 6th September, 1973 to the workman drawing his attention to the grievance procedure and subsequently letter copy Ex. W-13 dated 19th October, 1973 to Shri Amar Singh his authorised representative asking him the result of the appeal if filed before the Chairman of the Company and telling him that the workman should have filed the appeal before the Chairman of the Company in case the decision of the Works Committee had been intimated to him. The workman wrote a letter copy Ex. W-12, dated 6th November, 1973 to the Chairman of the Company praying for the decision of the appeal as he had been informed by the Labour Commissioner that the decision of the Works Committee was not unanimous.

No intimation was admittedly ever given by the Works Committee to the workman in respect of their failure to arrive at a unanimous decision and there is no evidence on record to this effect. I now propose to decide the issues as under with reference to the facts and provisions of clause 32 of the standing orders.

Issue No. 1 :—

This issue has two aspects one factual and the other legal. In other words it has to be seen and determined, firstly, as to whether it was obligatory for the workman to adopt the grievance procedure as reproduced above before raising a demand on the management and, secondly, if he actually adopted that procedure. I shall now endeavour to answer these questions as under :—

Taking the legal aspect of the question it is nowhere provided in clause 32 of the standing orders that the failure of the workman to adopt the procedure as given therein would debar him from raising an industrial dispute. This is, however, not all, inasmuch as debar can be inferred from the language given in clause 32 of the standing orders, impliedly, if it is not expressly stated. It has thus to be seen whether the interpretation of clause 32 of the standing orders as put by the management so as to make it obligatory on the workman to adopt the procedure as given therein before raising an industrial dispute, is justified.

The words, "the following procedure will be adopted" used in the first paragraph of clause 32 of the standing orders, are a pointer to the desire or the wish rather than to an order, as would appear from the meaning of "will" as given in the concise Oxford Dictionary. In contrast the word "shall" has a meaning and import and conveys sense, of an obligation and an order. I am thus convinced that the opening paragraphs of clause 32 of the standing orders do not make it obligatory for the workman to opt the procedure given therein as an essential requisite for raising an industrial dispute. Not only this, sub-clause (a) of clause 32 considerably reinforces the conclusion arrived at by me. For instance the sentence used in the opening part of clause A, "the workman will be entitled to appeal in writing to the Works Committee if in existence within 5 days of receipt of such order", provides for only an additional remedy to the workman for redress of his grievance and by no means leads to a conclusion of a duty cast on him before raising an industrial dispute. The words "will be entitled" connote a 'right' rather than an obligation, a discretion rather than duty, and an alternative rather than a must. The words "will be entitled" in the second line of clause B of clause 32, also leads to the same conclusion. The conclusion is thus irresistible that the procedure as given in clause 2 of the standing orders is not required to be adopted essentially in order to entitle the workman to raise an industrial dispute.

The learned counsel for the management, however, relied on a Division Bench Authority of the Punjab and Haryana High Court reported as 1973-I-LLJ-182 between Atlas Cycle Industries Ltd., Sonepat and Industrial Tribunal, Haryana where it was held on an interpretation of demand No. 16 of the settlement made under section 12(3) of the Industrial Disputes Act stated as under, that the dispute in respect of dismissal of the workman could not be referred to an Industrial Tribunal at the instance of the workman without his first exhausting the remedies provided under the settlement.

"Demand No. 16. Procedure of settlement of disputes:—

It is agreed that the following procedure will be resorted to for resolving all future disputes between the management and the workmen from time to time. All matters in dispute arising from time to time between the management and the workmen shall be referred by either party to a settlement board consisting of five representatives of the workmen and five representatives of the management to be nominated by the management. The board will be presided over by an executive to be appointed by the management."

It would appear that the authority relates to interpretation of settlement made on the basis of agreement of the parties casting a duty on either party to refer the dispute to a settlement board. The sentence "All matters in dispute arising from time to time between the management and the workmen shall be referred by either party to a settlement board" are a sufficient pointer to a sense of obligation and not a right on them. Even otherwise a settlement made under section 12(3) during the course of conciliation proceedings as a binding effect on the parties under section 18 sub-section (3) clause (a) of the Industrial Disputes Act and has thus a force much more than the standing order; In the case giving rise to the authority referred to by the council for the management, the parties had agreed to refer the dispute to the settlement board as preliminary essential requisite for raising an industrial dispute and the authority has thus no application to the facts of the case. "The words all matters in dispute shall be referred to" by either party to a settlement board as used in the settlement referred to in the Punjab and Haryana High Court Authority relied on by the management are in glaring contrast to the words used in clause 32 of the standing orders of the company as under, "the workman will be entitled to appeal in writing to the Works Committee if in existence" whereas the former denote a command the latter imply only a discretion. I thus hold on the legal aspect of this issue, that the workman was not under an obligation to have recourse to the procedure as laid down under clause 32 of the standing orders, before seeking relief from the Industrial Tribunal through a reference made to it by the Government at his instance".

Coming now to the factual aspect, it would appear from the admitted facts of the case as stated above, that the management put obstacles time and gain in the way of the workman to seek relief from the Works Committee and the Chairman of the Company and that they themselves failed to comply with the provisions of the standing orders 32 and the workman did his best to adopt the same and was prevented by the former successfully do so to its completion. It is now conceded by the management that the Works Committee failed to arrive at a unanimous decision and that this fact was conveyed to the Labour Commissioner,—*vide* letter dated 30th July, 1973 Ex. M-6 by the management with a copy to the Labour-cum-Conciliation Officer. It however looks strange that even though the Works Committee was under a duty and an obligation under sub-clause (b) of clause 32 of the standing orders to intimate about its inability to come to an unanimous decision, to the workman, yet it failed to do so till the date of demand raised by the workman leading to this reference and the later was obviously denied an important right available to him under the procedure prescribed. Even the Labour Commissioner was informed about the inability of the Works Committee to arrive at an unanimous decision, on repeated demands made by him and it will not be thus wrong to state, that the Works Committee and the management sat tight over an appeal filed by the workman before the former on 16th September, 1972, till 11th January, 1973 when the minutes were recorded in respect of the appeal for the first time relating to their un-unanimity even this delayed in decision was never conveyed to the workman. The appeal filed by the workman to the Chairman of the company was dismissed as premature,—*vide* order, dated 6th December, 1972 Ex. M-3. The workman was under the circumstances at the horns of a dilemma not knowing what to do and it can safely be said that the management, the Works Committee and the Chairman of the company joined together to contrive ways

and means to deny the workman his just rights and the remedy available to him under the procedure laid by them. Can it thus be said that the workman failed to comply with the provisions of clause 32 of the standing orders? The answer would be in an emphatic no with a finding that the workman knocked at every door and found it shut and the management themselves put hinderance in his way disabling him in entirety to have recourse to that procedure. I, therefore, answer the second aspect of this issue relating to the fact also in the negative against the management.

Issue No. 2.—“Termination simpliciter” and “loss of confidence” are a convenient and some time attractive process, for the management to follow but they have always to satisfy in law, the conscience of the Industrial Tribunal and the High Court, that the procedure adopted by them for weeding out an employee holding a position of trust, was bona fide, required to be made for the day-to-day effective administration and was not an act of victimisation on their part for extraneous considerations. It would thus be helpful to state *in extenso*, the observations of their Lordship of the Supreme Court in the latest decision reported as 1975-I-LLJ-262 as under: -

“Held, the law is simply this: The Tribunal has power and, indeed, the duty to x-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose is to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up its inability to establish by an inquiry, illegitimately but ingeniously passes an innocent-looking order of termination simpliciter such action is bad and liable to be set aside. Loss of confidence is no new armour for the management; otherwise security of tenure ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court can be subverted by this neo-formula. Loss of confidence in the law will be the consequence of the loss of confidence doctrine.”

Loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The Court is concerned with that latter and not the former although circumstances may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or a responsible post being misused or a sensitive or strategic position being abused it may be a high risk to keep the employee once suspicion has started and a disciplinary inquiry can not be forced on the matter. There, a termination simpliciter may be bona-fide not colourable and loss of confidence may be evidentiary of good faith of the employer.”

Having stated a principle of law, not disputed before me by either party, I have now to see as to how far the action of the management in terminating the services of the workman in a simpliciter as a result of loss of confidence in him is justified. It has in other words to be found if the management has been able to substantiate their bonafides in the instant case in the light of the law stated by their lordships of the Supreme Court.

The management in this connection remained contented by examining Shri L.K. Narain, their Personnel Officer and neither examined Shri Hari Chand alleged to have found an envelope containing Rs 50 near the main gate of the factory, on 1st September, 1972 at about 8.30 A.M. and handed over the same to the workman concerned for depositing it with the company, nor brought on record any report if any made by him in writing, even though the workman had stoutly denied this charge. Shri L.K. Narain, Personnel Officer of the management, the only witness examined on their behalf, stated only the facts of the case related to the receipt of the complaint by him against the workman and discharge of his service in simpliciter under clause 29-A of the Standing Rules on consideration of his explanation. Such a deposition only amounted to a statement of their case by the management and did not amount to an evidence entitling this Tribunal to put reliance on it to justify the impugned action. No reasons were stated by the management for their failure to bring substantive evidence on record and the presumption under the circumstances is that they were not in possession of evidence to justify their action.

Reference may be made in this connection to the pleas of the management found expressly stated in their written statement that the workman had been warned a number of occasions for negligence of duties resulting in their ultimately losing confidence in him. They specifically denied his allegation that he never gave them any occasion for complaint during the whole period of his service of about 8 years. It is, however, significant to note that not a word was said even by Shri L.K. Narain, Personnel Officer, alone witness examined by the management, in respect of these pleas. This circumstances leads to an obvious inference against the management that the plea as put forth by them in the manner as referred to above was false to their knowledge, and was put forth just to deny, the allegation that the conduct of the workman during his service with them had always been unblemished, for denial sake. I am thus constrained to hold on this aspect of the matter, that the service record of the workman had been good and untarnished and no pin pricking could successfully be done by the management in this connection. To reiterate, there is not an iota of evidence on record for the management to justify the action and the following observations of the Hon’ble Supreme Court made in the aforesaid authority well apply to the facts of the instant case and need be reproduced as under:—

“Some testimony of unseemly attempts by the Workman to get a secret outside his orbit, some indication of the source of suspicion, some proof of the sensitive or strategic role of the employee should and would have been forthcoming had the case been bona fide. To hit below the belt is not Industrial Law. We are constrained to express ourselves unmistakably lest industrial unrest induced by wrongful termination based on convenient loss of confidence should be generated.”

An employer, who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion should not be a mere whim or fancy. It should be bona-fide or reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly, with due care and prudence. If the exercise of such power is challenged on the ground of being colourable, or malafide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially.

No two cases can be identical on facts but the facts of the case giving rise to the Supreme Court Authorities as referred to above, are almost a kin to the facts of this case, in as much as, the services record of the workman for 8 long years in the instant case in absence of any evidence to the contrary shall have to be held as good and unblemished with no complaint against him at any stage, much loss of a finding, and there is no evidence on record in support of the loss of confidence of the management in him even though such evidence according to them was available. Perhaps fully conscious of the weakness of his case relating to the absence of the evidence Shri A.N. Pareekh learned counsel for the management made a prayer in paragraph 16 of his written arguments as under:

"If this Hon'ble Tribunal has any further questions to ask to satisfy its judicial conference, the company volunteers to place any further material that this Hon'ble Tribunal may consider necessary or further enquiring into the bonafides of the Management."

I have fully considered the prayer made by Shri A.N. Pareekh. I would, however, like to state in this connection, that the reference was made as back as on 17th April, 1974, and the issues were framed on 13th September, 1974 with full opportunities to the parties concerned to adduce their evidence. The management concluded their evidence as back as on 11th November, 1974 and never thought of adducing further evidence thereafter. The request made by the management in the manner as stated above, amounts to a prayer to this Tribunal to fill in the lacuna in the evidence if so found by it. In other words it amounts to inviting a finding and then to nullify and scrap it by calling upon the management to adduce evidence against it. Such a procedure is unknown to law and cannot be adopted. While holding against the management, I cannot now call upon them to rebut the finding arrived at by me, by adducing more evidence. I, therefore, decline to accede to this part of their request.

The authority reported as 1974-Labour Indian Cases-1129 of the Allahabad High Court, Nepal Singh vs. State of Uttar Pradesh, in respect of the subject relating to the applicability of article 314 (2) of the Constitution of India in respect of the simple termination of services of temporary Government Servant mainly on the ground of unsuitability relied on by the management as besides the point in issue, in the instant case relating to a permanent Chowkidar and is as such not relevant.

It had to be conceded by Shri A.N. Pareekh that the statement relating to the facts incorporated in the written argument that the decision of the Works Committee dated 11th January, 1973 that the appeal of the workman was considered and no unanimous decision could be arrived at was communicated to the Workman, *vide* Company letter dated 24th January, 1973, was incorrect. The reliance put on by the learned counsel in the case reported in 1968-L.LJ-I-834, Sindhu Re-settlement Corporation Ltd. Vs Workman is on a matter not in issue, in as much as the legality of the demand notice is not found to have been questioned by the management in the written statement. The plea specifically taken by the management that there was no dispute in law between the parties, is quite different from the plea in respect of the legality of the demand or the industrial dispute referred to this Tribunal. Even this argument, that demand was not raised by the workman on the management before taking the matter to the Conciliation Officer and as such the reference was bad in law is thus also not tenable.

Considered from any angle the management has miserably failed to prove their bonafides in the matter of termination of the service of the workman. Not only that, in view of my finding, in respect of the good and unblemished record of service of the workman of 8 long years, since his appointment, and the failure of the management to substantiate their pleas relating to the allegations made with regard to the basis of the termination of services of the workman and absence of evidence in support thereof, the impugned order can safely be said to amount to an unfair labour practice and victimisation of the workman for extraneous reasons best known to the management themselves. I hold accordingly and decide this issue also against the management. The result is that the termination of the services of the workman Shri Bahadur Singh by the management is unjustified and not in order and he is entitled to be reinstated with continuity of service and full back wages.

I hold and order accordingly. I answer the reference and return the award in terms of my findings on issues Nos. 1 and 2.

Dated 12th January, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No.-6, dated the 12th January, 1976.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated, the 12th January, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 29th January, 1976

No. 684-4Lab-76/2797.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Auto and Metal Engineers, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA
ROHTAK

Reference No. 115 of 1971

between

SHRI H.S.D. GUPTA AND THE MANAGEMENT OF M/S AUTO AND METAL ENGINEERS,
FARIDABAD

AWARD

By order No. ID/FD/207-F/20738—42, dated 8th July, 1971 of the Governor of Haryana, the following dispute between the management of M/s Auto and Metal Engineers, Faridabad and its workman Shri H.S.D. Gupta was referred for adjudication to this-Court, in exercise of the powers conferred by clause(c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947:—

“Whether the termination of services of Shri H.S.D. Gupta was justified and in order ? If not, to what relief is he entitled ?”

The parties appeared in this court in response to the usual notices of reference sent to them and filed their pleadings.

The alleged workman Shri H.S.D. Gupta served the management with a notice of demand on 26th March, 1971 that he had been working in their factory w.e.f. 11th November, 1967 as an Accountant most satisfactorily and that his services had been abruptly terminated on 22nd March, 1971 illegally without service of any notice on him. He demanded his reinstatement in service with full back wages, and the demand thus led to this reference.

The management,—*vide* written statement pleaded that Shri H.S.D. Gupta had been employed by them as Office Superintendent-cum-Accounts Officer in a supervisory capacity and performed administrative and managerial duties drawing more than Rs. 500 P.M. and as such did not fall within the definition of term “workman” as laid down in section 2-S of the Industrial Disputes Act, 1947, hereinafter referred to as the Act, and the reference was bad in law. They stated that Shri Gupta abused the confidence and responsibility, reposed by them in him, inasmuch as, he began harassing the partners by making baseless, fictitious and false complaints, in order to achieve his selfish ends and thus he succeeded in getting rapid increments within short period of few months. They added that not being content with the increments raising his salary to Rs. 600 P.M., he demanded fantastically huge amounts under threats of disclosing secret matters of the management and on the latter’s refusal to pay him Rs. 10,000 as demanded by him, he misbehaved and abused Shri V. K. Jain, the General Manager entailing their loss of confidence in him and resulting in their dispensing with his services on 20th March, 1971 in simpliciter without holding any enquiry. Shri Gupta according to them made false and baseless reports to the Income Tax Authorities even after the termination of his services leading to raids on their premises and seizure of their records by them (Income Tax Authorities) and that he further gave publicity to the raids in different papers causing them considerable public humiliation and disruption of their business. They averred that Shri Gupta made even a false complaint against them to the police and that it was finally dismissed.

The workman filed a rejoinder while controverting the pleas of the management with the result that the following issues were framed on pleas of the parties,—*vide* order, dated 17th November, 1971 of Shri P.N. Thukral, the then Presiding Officer of the Labour Court, Haryana, Rohtak.

1. Whether the applicant was serving as a workman in the respondent concern ?

2. If the above issue is found in favour of the workman, whether the termination of services of H.S.D. Gupta was justified and in order? If not, to what relief is he entitled?
3. Whether the applicant has secured better employment elsewhere?

I have heard the learned authorised representatives for the parties at some length and gone through the voluminous records. I decide the issues as under.

Issue No. 1.—

This is an important issue in the case and questions of law and fact are involved in its decision. Considering the legal aspect first, workman has been defined in section 2-S of the Act as under.

“ “Workman” means any person (including an apprentice) employed in any industry to do any skilled or unskilled or manual, supervisory, technical or clerical work for hire or reward, whether the term of employment be expressed or implied, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge, or retrenchment has led to that dispute but does not include any such person.

(i)

(ii)

(iii) Who is employed mainly in a managerial or administrative capacity; or

(iv) Who being employed in a supervisory capacity, draws wages exceeding Rs. 500/- P.M. or exercises either by the nature of the duties attached to the office or by reasons of the powers vested in him, functions mainly of a managerial nature.”

It could not be disputed in view of the definition of the term workman as reproduced above that a person in order to be a workman must in the first instance prove his employment in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward. He shall, however, be taken out of the category of the term “workman” if his employment was mainly in a managerial or administrative capacity or if employed in a supervisory capacity, he drew wages exceeding Rs. 500/-P.M. or exercised by the nature of the duties attached to his office or by reason of the powers vesting in him, functions mainly of managerial, nature.

The question came up for decision before the lordship of the Supreme Court in 1970-II-LJ-590 (Burmah Shell Oil Storage and Distribution Company of India Ltd. v/s the (Burmah Shell Management Staff Association and others and vice versa), wherein it was held as under:—

“For an employee in an industry to be workman under section 2(s) of the Industrial Disputes Act, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work, or clerical work. If the work done by an employee is not of such a nature, he would not be a workman.....

The principle is now well settled that for this purpose a workman must be held to be employed to do that work which is the main work, he is required to do, even though he may be incidentally doing other types of work.”

A Depot Superintendent and Assistant Depot Superintendent employed by an Oil Distributing Company performing duties substantially of a clerical nature were held workman, in 1954-II-LJ-155 (Burma Shell Oil Storage and Distributing Company of India Ltd., Madras and Labour Appellate Tribunal of India and two others) by the Madras High Court. An employee doing mainly clerical and occasionally discharging some duties of a supervisory nature was held to be a workman in 1969-II-LJ-670 between Anand Bazar Patrika (P)Ltd., and its workman.

It would thus appear that the main work done by an employee has been held to be the criterian for judging if he was a workman or not even if incidentally he did some other work. It shall thus have to be seen and found in the instant case, if the main duties of Shri H.S.D. Gupta were those of a clerical nature as alleged by him or these were mainly of a supervisory or administrative nature as pleaded by the management. It is now conceded on both sides that Shri Gupta was drawing wages exceeding Rs. 500/-P.M. on the date of the termination of his services and if he is proved to have been engaged mainly in a supervisory capacity he shall be deemed to be taken out of the definition of workman. In case he is proved to have acted mainly in a managerial or administrative capacity he can no longer be called workman.

Having discussed the legal side of the question in hand, this brings me to another important question of appraisal of evidence led by the parties and find out with reference there to in view of the law on the subject, if Shri Gupta fell within the definition of a workman or not on the date of termination of his services. He in order to prove his case served interrogatories on the management and the later filed their reply dated 21st February, 1972 Exhibit M.W.1/2 thereto. He examined Shri Kundan Lal U.D.C. Local Office, Employees State Insurance Corporation, Faridabad W.W.1 besides making his own statement as W.W.2. He brought on record declaration form filed by him before the Employees State Insurance Corporation Exhibit W.W.1/1, certificate Exhibit W.W.2/2 of the respondents passed on to the Agent Indian Overseas Bank, Faridabad in respect of his emoluments, the details of salary paid to 7 employees of the respondent as stated by the later, Exhibit W.W.2/3, certificate Exhibit W.W.2/4 dated 22nd April, 1971 of the Income Tax Officer relating to the assessment of Shri Gupta on a total income of Rs. 5870/- after giving him credit for life Insurance Corporation and Provident Fund during the assessment year 1970-71, notice of demand Ex. W.W. 2/5 served by Shri Gupta on the management. This is all the evidence oral and documentary led by him.

Shri H.S.D. Gupta had been described as an Accountant against column No. 14 relating to particulars of his employment, in proforma Exhibit W.W. 1/1 filled in and submitted by him in the office of the Employees State Insurance Corporation. He has been stated as an Accountant in the certificate Ex. W.W. 2/2 passed on by the management to the Bank. He has also been described as an Accountant in the details of salary paid to him by the management Exhibit W.W. 2/3 and in the certificate Ex. W.W. 2/4 of the Income Tax Officer. The notice of demand Exhibit W.W. 2/5 served by him on the management describing himself as an Accountant after the dispute had arisen has no evidentiary value. The document Exhibit W.W. 2/2 and W.W. 2/3 may however, be taken as constituting some admission of the management of Shri Gupta being an Accountant. The documents Exhibit W.W. 1/1 un-dated and W.W. 2/4 dated 22nd April, 1971 bear an admission made by Shri Gupta in his own favour probably after the dispute had arisen and can not be said to have much evidentiary value.

The management admitted vide Exhibit W.W. 1/2, reply filed by them to the interrogatories of Shri Gupta that he wrote the Cash Book and posted entries in the general ledger only rarely and the total number of entries in cash book in his handwriting used to be an average between 5 to 7. They admitted that he scribed and prepared vouchers rarely and that he prepared trial balance once every six months and that he made on an average 20 to 25 entries in a month in the stock register. They admitted that he prepared the balance-sheet and trading profit and loss accounts once in a year and that he scribed and maintained suppliers rough ledger occasionally and made 15 to 20 entries in a month and that he prepared hardly 2 or 3 cheques in a month. They stated that he checked daily Bank accounts, Wage Sheets and Registers of Provident Fund and Income Tax, etc. and that he either prepared or caused to be prepared the statements and returns under the various Acts and applications sent to different offices. They denied that he ever did typing work or marked attendance. They specifically gave out that there was a Accounts Clerk in their employment during the period of service of Shri Gupta. The plea that there were accounts clerk and other accountants other than Shri Gupta in the employment of the management is found supported, —vide statement Exhibit W.W. 2/3 relating to details of salary paid during the assessment year 1968-69 wherein S/Shri N.K. Sehgal and Girish Chand had been shown as Clerks and S/Shri R.K. Gupta and Ram Bihari as part time accountants. The statement Exhibit W.W. 2/3 thus leads to a conclusion that much of the clerical and accounts work was done and performed by these four officials and that Shri Gupta only supervised their work.

Coming to the oral evidence, Shri Kundan Lal U.D.C. only proved the un-dated declaration Exhibit W.W. 1/1 already referred to as correct. Shri H.S.D. Gupta himself appeared as his own witness and deposed that he maintained accounts consisting of balance sheets, profit and loss accounts, cashbook, ledgers and that he prepared returns regarding Income Tax, Provident Fund and Employees State Insurance Scheme etc., of the management. He admitted that he had been appointed on wages of Rs. 375 P.M. on 11th November, 1967 as an Accountant orally without issue of any appointment letter and that his wages were raised to Rs. 600 P.M. in a short period of 3 years and that he ceased to be governed by the provisions of Employees State Insurance Corporation Act. He admitted that he did not prepare any of the declaration form in the file sets A.B. and C shown to him. He admitted that there was a Stenographer named Kanwal Nain Kaur who did most of the typing work. He admitted that he never made entries in the attendance register and that the entries relating to the designations name and father's names of the workmen in the register of wages shown to him had been written by some person other than him. It is thus understandable as to which of the entries in the Wages Register were in his handwriting. He admitted that besides Kanwal Nain Kaur and Naresh Kumar a Store Keeper and Time Keeper had also been appointed by the management and that the duties of Naresh Kumar were to mark attendance and keep records of overtime and issue stores in the factory. His statement including the aforesaid admissions would thus indicate that he could not make reference to any specific clerical duty or duties of an accountant establishing him as a workman. He did not make any attempt to summon the records of the management from the Income Tax Office to show and establish that much of the clerical work found done was in his handwriting. An application made by him subsequently in this connection after the parties had closed their evidence, was not pursued by him and had as such to be dismissed on his absenting himself despite service of notice. This led to a presumption that he was not really interested in summoning this record and the same if brought would not have supported his case. There thus remained his solitary statement on record that he did some of the clerical work and made entries in the registers. Even this statement stood rebutted by the admissions referred to above. The statements made by the management in reply Exhibit M.W. 1/2 of the interrogatories on them by the workman that the later made entries in the cash book, general ledgers, prepared vouchers and trial balances and made entries in the stock registers and prepared the balance sheets only rarely has not been proved in any way to be in correct.

This is, however, not all, there is overwhelming evidence on record establishing beyond doubt that Shri H.S.D. Gupta always acted in a supervisory, administrative and managerial capacity. Some of the duties discharged by him in this capacity are stated by the management in Exhibit M.W. 1/1 filed by them in pursuance to the order dated 27th April, 1972 of this court directing them to do so. For instance they stated :--

- (a) That Shri Gupta represented the management in industrial disputes before the Conciliation Officer as Manager with powers to take decisions, signed documents and settle cases on their behalf.
- (b) That he issued mainly certificates of service to employees of their factory at the time of their leaving the service.
- (c) That he dictated letters to the Stenographer and the Typist in respect to employees provident fund department, Employment Exchange, Industries Department, Banks, Sales Tax Department etc., and signed the same in his administrative and managerial capacity.
- (d) That he issued and signed notices giving orders to the factory workmen.
- (e) That he supervised accounts, stores and stocks.
- (f) That he supervised the work of Clerks, Stenographer, Typist and Chowkidar etc.

Shri V.K. Jain, General Manager supported the statement Exhibit W.W. 1/1 by coming in the witness-box and nothing could be brought in his cross-examination justifying rejection of his evidence as false

The pleas of the management are found corroborated by the admissions of the workman himself contained in documents 42 in numbers as mentioned in the list dated 17th November, 1971 and 40 in number as mentioned in the other undated list 12 of these documents bearing different dates relating to the period of service and quality of work and character of different workmen were certificates admittedly issued by Shri H.S.D. Gupta under his own signatures. The proforma submitted under the Employees Provident Fund Scheme in respect of Miss Kanwal Nain Narula, Om Parkash, Mathura Dutt were admittedly sent by Shri Gupta under his signatures. There are letters 60 in numbers sent from time to time by Shri H.S.D. Gupta during the period from 22nd May, 1969 to 9th February, 1971, to different offices and business concern under his signatures made by him as General Manager of M/S Auto and Metal Engineer, Faridabad Notice dated 3rd September, 1970 declaring 6th September, 1970 as a holiday in the factory purports to be signed by Shri H.S.D. Gupta and in view of his failure to deny his signatures on the same shall be deemed to be under his signatures. Authority letters dated 8th June, 1970 and 16th September, 1970 authorised Shri H.S.D. Gupta to appear before the Conciliation Officer on behalf of the management and sign any documents and settle the case on their behalf. These bear the signatures of the General Manager Shri V.K. Jain. It would thus appear from the aforesaid documents 82 in number that Shri H.S.D. Gupta had always been acting in a supervisory, administrative and managerial capacity and none of the acts borne out by the aforesaid documents could not even by a stretch of imagination be said to be of a clerical nature. The explanation made by Shri Gupta in his statement dated 27th January, 1972 that he signed all these documents relying on the oral instructions of Shri V.K. Jain in their absence without meaning to do so is too ridiculous to be relied upon and it can not be believed that he would sign as many as 82 documents so innocently. There is in my opinion thus voluminous evidence on record constituted by the aforesaid documents establishing that Shri H.S.D. Gupta always acted in a supervisory, administrative and managerial capacity and that on a number of times he actually signed as General Manager. Few and stray entries even if found in the account books in his handwriting shall be deemed to have been made incidentally and his main duties definitely were thus of the nature already stated.

Applying the principles of law stated above from the authorities of the Hon'ble the Supreme Court and the High Courts, it would become manifest that Shri H.S.D. Gupta was not a workman within the definition as given in the Act.

Shri Gupta in order to lend strength to his case brought on record an order Exhibit W.W. 2/1 relating to the termination of his services and allegedly signed by one Shri N.L. Madan a Clerk of the management. Shri Gupta probably wanted to show that a Clerk not have signed this letter relating to the termination of his services if he had ever acted in a supervisory, administrative or managerial capacity. It is, however, significant to note that Shri N.L. Madan was never examined by Shri Gupta to prove the authenticity of this letter or to disclose his capacity in which he terminated the services of Shri Gupta. The conclusion is that this is not proved to be a genuine document inspiring confidence. In this connection believe the statement of Shri V.K. Jain that the services of Shri Gupta were terminated verbally as a result of the un-desirable activities and irresponsible conduct, he was found indulging in.

I for the reasons aforesaid, decide this issue against the workman.

Issue No. 2. --The explanation given by Shri V.K. Jain the only witness examined by the management that Shri Gupta wanted him to pay to him Rs. 10000 out of a sum of Rs. 1000000 won by him in a lottery under a threat that he would make a complaint to the Income Tax Authorities is obviously a made up story put forth to make some ground for terminating his services. No evidence worth the name could thus be brought on record by the management in support of this allegation made to justify the termination of the services of Shri Gupta, in

simpliciter, bonafide and the impugned order thus can safely be said to be an unfair labour practice and an act of victimisation. The workman appearing as his own witness rebutted the statement while denying the allegation. I thus decide this issue against the management.

Issue No. 3.—Shri Gupta admitted having served M/s Continental Device Manufacturing Company, Ballabgarh for about 20 days and thereafter M/s Tara Chand Saluja and Company for about a month after his services had been terminated. There is no other evidence on record for the management establishing his employment anywhere else. I thus relying on the admission of Shri Gupta hold that he worked for about 1 month and 20 days in other concerns after the date of termination of his services. I decide this issue accordingly.

I as a result of my findings on issue No. 1 hold that the reference made to this court by the Government relating to the termination of the services of Shri H.S.D. Gupta held by me not to be a workman is not in respect of an industrial dispute as defined in the Act and is as such bad in law and the workman is not entitled to any relief. I return the award accordingly. There shall be no order as to costs.

Dated the 12th January, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 473-4Lab-76/2799.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Mechanical Movements (P) Ltd., Bahadurgarh.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 15 of 1974

between

SHRI SATYA NARAIN AND THE MANAGEMENT OF M/S MECHANICAL MOVEMENTS (P) LTD.
BAHADURGARH

AWARD

By order No. ID/RK/200-D-73/4977-81, dated 22nd February, 1974 of the Governor of Haryana, the following dispute between the management of M/s Mechanical Movements (P) Ltd., Bahadurgarh and its workman Shri Satya Narain was referred for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947.

“Whether the termination of services of Shri Satya Narain was justified and in order? If not, to what relief is he entitled?”

The parties appeared in this court in response to the notices of reference sent to them and filed their pleadings.

The workman alleged that his services as a permanent Fitter on wages of Rs 160 P.M. were illegally terminated by the management on 24th September, 1973 without assigning any reason and that he had been victimised for his trade union activities.

The management pleaded that the workman had been employed on temporary basis for a specified period of 4 months only w.e.f. 29th May, 1973 on a monthly wages of Rs 160 P.M.,—*vide* an appointment letter issued to him in writing. They stated that the services of the workman were legally terminated in terms of para No. 3 of the appointment letter providing that his services could be dispensed with during the temporary period, without notice or compensation and without giving any reason.

The workman filed a rejoinder controverting the pleas of the management with the result that an issue was framed as per terms of the reference,—*vide* order, dated 17th August, 1974.

The management examined Shri Siri Dhar their Cashier M.W. 1 who deposed that Shri Sat Narain was appointed,—*vide* appointment letter copy Exhibit M. 1 and that the workman signed the original appointment letter brought by him in court in token of his having received the copy. He admitted in cross-examination, that the services of the workman were terminated by the Factory Manager by means of an oral order on the ground that his work was not found satisfactory.

Shri Sat Narain appearing as W.W. 1 denied his signatures on the appointment letter Exhibit W 2, thus suggesting that this was faked document prepared by the management subsequently.

I have considered the whole matter and agree with the contention of the workman that the act of the management in terminating his services was malafide and amounted to an un-fair labour practice. I propose to state the following reasons in support of this conclusion arrived at by me.

- (a) Shri Siri Dhar M.W. 1 admitted having sent letter Ex. W. 1 to the workman. This letter is found containing a statement of the factory manager that the workman had left the job voluntarily on the after-noon of 24th September, 1973 and that he continued to be absented till 28th September, 1973 and that he had raised a demand, *vide* notice date 25th September, 1973 only in order to harass them. This stand in respect of voluntary absence of the workman is obviously contradictory to and inconsistent with the plea of the management taken in the written statement, that the services of the workman were terminated, *vide* an oral order in terms of para 3 of the appointment letter.
- (b) Whereas the management took a plea of termination of services of the workman in simpliciter during the temporary period under clause 3 of the appointment letter, Shri Siri Dhar. M.W. 1 deposed contradictory to and inconsistent with this plea, that the services of the workman were terminated on the ground that his work was not satisfactory.

The case as set up by the management at the evidence stage is found to be an improvement on their please taken in the written statement. In view of an averment found made in the letter Exhibit. W. 1 by the management in respect of the absence of the workman and the contradictory pleas as referred to above, I am satisfied that the appointment letter Ex. W. 2 is an out and out fabrication and does not bear the signatures of the workman which appear to be different from his signatures in the wages register and on the notice of demand, to naked eye.

Even otherwise, the termination of the services of the workman on the ground of his un-satisfactory nature of work cast a stigma on his conduct and required a little probe by the management into such an allegation and evidence on record of this court in support thereof. It would appear from the statement of Shri Siri Dhar W.W. 1 that the services of the workman were not terminated in accordance with clause 3 of the appointment letter but were on the other hand, dispensed with on the ground of his unsatisfactory work and there is no evidence on record in support of this allegation. Considered from any angle the order of termination of the services of the workman is proved to be unjustified. I hold accordingly and direct that he shall be reinstated w.e.f. 24th September, 1973 with continuity of service and full back wages. I decide the issue accordingly and answer the reference while returning the award in term of my findings made above. There shall be no order as to costs.

Dated the 9th January, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 78, dated the 12th January, 1976.

Forwarded (four copies), to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

P. P. CAPRIHAN, Commr. and Secy.

**PUBLIC WORKS DEPARTMENT
BUILDINGS AND ROADS BRANCH
Gurgaon Circle, P.W.D., B. & R. Branch**

The 15th January, 1976

No. 28/GA/87-E/1152.—Whereas it appears to the Governor of Haryana that land specified below is likely to be required to be taken by the Government, at public expenses, for a public purpose,

namely, for constructing a road from Gehlab to Bhanguri via Bamnaula Jogi and Kalsada in Gurgaon District. It is hereby notified that the land in the locality described below is likely to be acquired for the above purpose.

This notification is made under the provisions of section (4) of the Land Acquisition Act, 1894 to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any and in the locality and do all other acts required or permitted by that section.

Any person interested who has any objection to the acquisition of any land in the locality may within 30 days of the publication of this notification, file an objection in writing before the Land Acquisition Collector, Haryana P.W.D., B. & R., Ambala Cantt.

SPECIFICATION

Serial No.	Name of District	Name of Tehsil	Name of Village	Area in Acres	Remarks
1	2	3	4	5	6
1	Gurgaon	Nuh	Gehlab	6.56	27
					14/2, 14/3, 14/4, 17/1, 17/2, 24/1, 24/2 32
					4/1, 4/2, 7/1, 7/2, 7/3, 7/4, 7/6, 14/1, 14/2, 17/1 32
					17/2, 17/3, 24/1, 24/2 41
					4/1, 4/2, 7/1, 7/2, 14/1, 14/2, 17/1, 17/2, 24/1, 24/2 54
					4/1, 4/2, 7/1, 5, 6, 15 1, 15/2, 16 53
					20, 21/1, 21/2 64
					1/1, 1/2, 1/3, 9/1, 9/2, 10/1, 10/2, 11/2, 12, 19/1, 64
					19/2, 19/3, 28, 22/2, 18, 23, 430 75
					2/2, 3, 8, 9, 13, 18, 19, 22, 23 6
2	Do	Do	Bajada Pahari	5.12	9
					21/1, 21/2 25
					10 10
					1/1, 1/2, 10/1, 10/2, 11/1, 11/2, 20/1, 20/2, 18
					21/1, 21/2 19
					5, 6, 15/1, 15/2, 16/1, 16/2, 25/1, 25/2 21
					5/1, 5'2, 6/1, 6/2, 15/1, 15/2, 15/3, 16/1, 16/2, 21 33
					17, 24, 25 4/1, 4/2, 5, 6, 7, 14, 15, 16, 17, 24, 25 34
					4/1, 4/2, 6

Serial No.	Name of District	Name of Tehsil	Name of Village	Area in Acres	Remarks
1	2	3	4	5	6
3	Gurgaon	Nuh	Bamnaula Jogi	6.40	27 22, 23, 2/1, 2/2, 3, 4, 6, 7/1, 7/2, 8/1, 8/2 33 15, 47, 20, 19, 22, 23/1 36 2, 3, 9/1, 9/2, 12/1, 12/2, 19/1, 19/2, 22/1, 22/2 39 2/1, 2/2, 9, 10, 11, 12, 19, 20/1, 20/2, 20/3, 39 21/1, 21/2, 22 42 1/1, 1/2, 2, 9, 10, 11/1, 11/2, 12, 20/1, 20/2 32 3, 4, 5, 6/1, 6/2, 7, 8, 9 33 1, 9/1, 9/2, 10/1, 10/2, 10/3, 26, 11, 12, 19/1, 33 33 19/2, 22, 23, 3, 4, 7/1, 7/2, 8, 6, 14/2, 15, 16, 25 40 20, 170, 173, 172, 171, 175, 186, 185, 184, 187, 188, 189, 197, 196, 199, 198, 200, 205, 206, 208, 209, 217, 216, 218, 219, 220, 223, 224, 225, 243, 244, 245, 247, 248, 249, 250, 255, 254, 253, 256, 252, 250, 59, 258, 259, 260, 261, 262, 263, 266, 267, 268, 265, 269, 270, 271 46 52 5, 6, 15, 16, 25 51 11, 12, 13, 14, 15 53 11, 12, 20, 21, 22 60 15/1, 15/2, 6, 5 63 1, 2, 9, 10, 11, 12, 19, 20, 21 1 30 10, 9, 12/1, 12/2, 18, 19, 23, 22/1, 22/2, 30 22/3, 68, 30/88 37 3/1, 3/2, 7, 8/1, 8/2, 13, 14, 17/1, 17/2,
4	Do	Do	Kalsada	8.82	
Do	Do	Bhanguri	3.80		

Serial No.	Name of District	Name of Tehsil	Name of Village	Area in Acres	Remarks
1	2	3	4	5	6
5.	Gurgaon— concl'd.	Nuh— concl'd.	Bhanguri— concl'd.	3.80— concl'd.	37 24/1, 24/2, 25
					42 4, 5, 6/1, 6/2, 7/1, 15/1, 15/2, 16/1, 16/2, 25/1, 25/2
					41 11, 20/1, 20/2, 21/1, 21/2
					50 1/1, 1/2, 9, 10, 11, 12, 19/1, 19/2, 20, 22/1, 22/2
					51 2
					Total Area .. 30.70

The 29th January, 1976

No. 28-GA/87-E/1155.—Whereas it appears to the Governor of Haryana that land is likely to be required to be taken by Government, at public expense, for a public purpose namely constructing a road from Mandkola Hathin Road to village Khokiaka Puthli in Gurgaon District, it is hereby notified that the land described in the specification below is required for above purpose.

This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana, is pleased to authorise the officers, for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested who has any objection to the acquisition of any land in the locality, may within thirty days after the date of which public notice of the substance of this notification is given in the locality, file an objection in writing before the Land Acquisition Collector, Public Works Department, Buildings and Roads Branch, Ambala Cantt.

SPECIFICATIONS

District	Tehsil	Locality/ Village	Hadbast No.	Area in Acres	Khasra No.
1	2	3	4	5	6
1. Gurgaon	Nuh	Gharot	256	4.64	8 11, 12, 19, 20/1, 20/2, 21/1, 21/2
					16 1/1, 1/2, 10/1
					17 5, 6/1, 6/2, 15/1, 15/2, 16, 17/1, 17/2, 24/1, 25

1	2	3	4	5	6
1.	Gurgaon	Nuh	Gharot— <i>concl'd.</i>	256 - <i>concl'd.</i>	4.64 - <i>concl'd.</i>
					23 3/2, 4/1, 4/2, 4/3, 7, 8/1, 8/2, 13, 14, 18/1, 18/2, 18/3, 18/4, 22, 23/1, 23, 2
					36 2, 3, 9/1, 9/2, 10, 11, 12, 19, 20/1, 20/2, 21/1, 21/2
					37 16, 24, 25
					42 3, 4, 5, 8, 9/1, 12, 19, 21
					55 1/1, 1/2, 2, 23, 232, 233, 234, 239, 241, 242, 243, 250, 251, 252, 253, 254
2.	Gurgaon	Nuh	Puthli	221	4.70 5 11/1, 11/2, 20/1, 20/2, 21/1, 21/2
					14 1/1, 1/2, 10/1, 10/2, 11/1, 11/2, 20/1, 20/2, 21/1, 21/2
					19 1/1, 1/2, 10/1, 10/2, 11/1, 11/2, 20/1, 20/2, 21/1, 22/2, 12, 19, 22, 23
					26 1/1, 1/2, 10/1, 10/2, 10/3, 11, 12, 17, 18, 23, 24, 2, 3, 8, 9, 13
					32 4, 8, 13/1, 13/2, 17, 18, 21/1, 21/2, 22/1, 22/2, 23 33 16, 24, 25
					38 4/1, 4/2, 5, 7/1, 7/2, 13, 14, 18/1, 18/2, 22, 23
					42 2, 3, 9/1, 9/2, 11, 12, 53, 112, 113, 114, 116, 117, 118, 119, 124, 125, 126, 127, 133, 134, 135, 136, 137, 138, 139, 140, 141, 148, 149, 150, 151, 152, 153, 154, 155, 166, 170, 171, 317, 318

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3.	Gurgaon	Nuh	Khokiaka	219	1.51	26
					14, 16, 17, 24, 25	,
					31	
					4, 5, 6, 7, 15/1, 15/2, 16/1, 16/2, 25/1, 25/2	
					32	34
					21/2	1, 10/1, 10/2
					35	
					5, 6, 47, 132, 133, 134, 135, 136, 137, 138, 139,	
					140	
			G. Total		10.85 acres	

O. P. KAPUR,
 Superintending Engineer,
 Gurgaon Circle, P.W.D. B.&R. Branch,
 Gurgaon.